

The Honorable James L. Robart

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

JOHNNY B. DELASHAW, JR.,

Plaintiff,

v.

SEATTLE TIMES COMPANY, and CHARLES
COBBS,

Defendants.

Case No. 2:18-cv-00537-JLR

**STIPULATED MOTION AND
ORDER RE: LIMITED
INTERVENTION BY DR. ROD
OSKOUIAN**

**NOTE ON MOTION CALENDAR:
July 27, 2020**

Dr. Rod Oskouian (“Dr. Oskouian”) respectfully requests that this Court allow him to intervene in this action under Fed R. Civ. P. 24 as in interested party solely for the limited purpose of addressing the potential use of materials Dr. Oskouian designated as confidential under the stipulated protective order in this case. Dkt. 45-1; 46. Dr. Cobbs has filed two motions to seal that include materials Dr. Oskouian designated as confidential: (1) Motion to Seal in conjunction with Dr. Cobbs’s Second Motion for Summary Judgment (Dkt. 205); and (2) Motion to Seal in Conjunction with Dr. Cobbs’s Motions in Limine (Dkt. 214). Dr. Oskouian seeks to intervene at this time only to address those motions. Counsel for all parties have conferred and stipulated to Dr. Oskouian’s request for limited intervention. In so stipulating, counsel for the parties here stipulate only to Dr. Oskouian’s request for limited intervention to be heard on Dr. Cobbs’ motion to seal, not to any arguments made about keeping any documents out of the open court file. Dr. Delashaw, Dr. Cobbs, and the Seattle Times expressly state, and

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(Case No. 2:18-cv-00537-JLR)

Dr. Oskouian acknowledges, that nothing in this stipulated motion is intended to impact any arguments the parties might have with respect to Dr. Cobbs's motion to seal.

ARGUMENT

1. The Fed. R. Civ. P. 24(a) Standard for Intervention.

Under Fed. R. Civ. P. 24(a), the Court "must permit anyone to intervene who claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). A motion must be granted if: (1) the application is timely; (2) the applicant has a "significantly protectable" interest relating to the property or transaction that is the subject of the action; (3) the applicant is so situated that the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect that interest; and (4) the applicant's interest is not adequately represented by the existing parties in the lawsuit. *Southwest Center for Biological Diversity v. Berg*, 268 F.3d 810, 817 (9th Cir. 2001). The Court's evaluation is "guided primarily by practical considerations," not technical distinctions. *Id.* Dr. Oskouian asserts that his motion meets each of the four requirements.

2. Dr. Oskouian is entitled to limited intervention to protect his confidentiality interest.

a. *Timeliness*

The Seattle Times subpoenaed Dr. Oskouian to provide deposition testimony. Dr. Oskouian was deposed pursuant to that subpoena on June 12, 2020. At the conclusion of that deposition, Dr. Oskouian's counsel designated the transcript as confidential, as provided under the stipulated protective order. On July 9, 2020, after discussion with defendants' counsel, Dr. Oskouian confirmed by page and line a more specific list of portions of the transcript to be designated as confidential.

The protective order and this Court's rules require a party filing confidential material to confer with the designating party to determine whether the designating party will withdraw the

1 confidential designations before filing. Dr. Cobbs's counsel and Dr. Oskouian's counsel had
 2 several conversations regarding confidentiality designations, but were unable to resolve their
 3 differences.

4 Dr. Cobbs then filed on July 13, 2020, his motion to seal in conjunction with his Second
 5 Motion for Summary Judgment. (Dkt. 205). Dr. Oskouian now timely seeks to intervene to
 6 protect his confidentiality interest just two weeks after the motion to seal was filed.

7 **b. *Significant Protectable Interest.***

8 An applicant for intervention has a "significant protectable interest" in an action if (1) it
 9 asserts an interest that is protected under some law, and (2) there is a "relationship" between its
 10 legally protected interest and the plaintiff's claims. *Donnelly v. Glickman*, 159 F.3d 405, 409
 11 (9th Cir. 1998) (citing *Northwest forest Resource Council v. Glickman*, 82 F.3d 825, 837 (9th
 12 Cir. 1996)). "An applicant generally satisfies the 'relationship' requirement only if the
 13 resolution of the plaintiff's claims actually will affect the applicant." *Donnelly*, 159 F.3d at 410
 14 (citing *Montana v. United States Env'tl. Protection Agency*, 137 F.3d 1135, 1141-42 (9th Cir.
 15 1998)).

16 Dr. Oskouian contends that he "asserts an interest that is protected under some law"
 17 because he argues that the materials he designated as confidential implicate his constitutionally-
 18 protected rights and his due process rights under the stipulated protective order entered under
 19 Fed. R. Civ. P. 26.

20 Likewise, Dr. Oskouian contends there is a "relationship" between Dr. Oskouian's legally
 21 protectable confidentiality interest and the claims and defenses in the suit because Dr. Cobbs has
 22 relied on material Dr. Oskouian designated as confidential in support of his Second Motion for
 23 Summary Judgment. This Court's LCR 5(g) actually provides that it is incumbent upon the party
 24 designating materials as confidential under a stipulated protective order to satisfy this Court's
 25 local rules to confirm that the material should be sealed from the public record. *See* LCR
 26 5(g)(3)(B) ("where parties have entered a . . . stipulated protective order . . . the party who

1 designated the document confidential must satisfy subpart 3(B) in its response to the motion to
 2 seal or in a stipulated motion.”). Dr. Oskouian therefore respectfully submits that LCR 5(g)
 3 firmly establishes that there is a relationship between Dr. Oskouian’s confidentiality interest and
 4 the claims and defenses at issue here, specifically including Dr. Cobbs’s Second Motion for
 5 Summary Judgment.

6 c. ***Effect of Disposition on Dr. Oskouian’s Ability to Protect His Interest.***

7 Although Dr. Oskouian is not a party here and has no interest in the ultimate outcome of
 8 this lawsuit on its merits, Dr. Cobbs has filed a motion for summary judgment relying, in part, on
 9 materials Dr. Oskouian has designated as confidential. Because those confidential materials are
 10 now implicated in potentially public filings, unless Dr. Oskouian intervenes, Dr. Oskouian
 11 asserts that the disposition of this case will directly impact his privacy and other interests.
 12 Where the Court agrees that a non-party has a “significant protectable interest,” it should have
 13 “little difficulty concluding that the disposition of the case may, as a practical matter, affect it.”
 14 *California ex rel. Lockyer v. U.S.*, 450 F.3d 436, 442 (2006) (the court found the movant had a
 15 “significant protectable interest” and therefore “we have little difficulty concluding that the
 16 disposition of this case may, as a practical matter, affect it.”). Given Dr. Oskouian’s asserted
 17 significant protectable interest vis-à-vis his privacy and reputational interests, this Court should
 18 have no difficulty concluding that the disposition of this case, and particularly the motions to
 19 seal, without Dr. Oskouian’s intervention will impact Dr. Oskouian.

20 d. ***Dr. Oskouian’s interests are not adequately protected by the existing parties.***

21 “In determining adequacy of representation, we consider whether the interest of a
 22 present party is such that it will undoubtedly make all the intervenor’s arguments; whether the
 23 present party is capable and willing to make such arguments; and whether the intervenor would
 24 offer any necessary elements to the proceedings that other parties would neglect.” *People of*
 25 *State of California v. Tahoe Reg’l Planning Agency*, 792 F.2d 775, 778 (9th Cir. 1986) (internal
 26

1 citations omitted). “The applicant is required only to make a minimal showing that
2 representation of its interests may be inadequate.” *Id.*

3 None of the actual parties to the lawsuit are situated such that they can adequately
4 protect Dr. Oskouian’s individual privacy interests. Dr. Oskouian is a non-party, and has no
5 connection to the litigants here. Dr. Oskouian exercised his individual right under the stipulated
6 protective order to designate portions of his deposition testimony as confidential. Only Dr.
7 Oskouian, therefore, is capable of adequately advancing arguments to sufficiently protect his
8 asserted privacy interest.

9 CONCLUSION

10 For the foregoing reasons, Dr. Oskouian respectfully submits that his motion meets the
11 Fed R. Civ. P. 24(a) standard for intervention, particularly for the limited purposes sought here.
12 Dr. Oskouian therefore respectfully requests that this Court grant its stipulated motion to
13 intervene for the limited purposes of addressing his interest in maintaining the confidentiality of
14 certain documents.

15 Stipulated and agreed to this 27th day of July, 2020.

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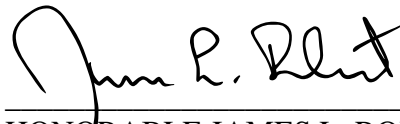
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ORDER

Pursuant to the parties' stipulated motion, IT IS SO ORDERED.

DATED this 3rd day of August, 2020.



HONORABLE JAMES L. ROBART
UNITED STATES DISTRICT JUDGE

1 Presented by:

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CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2020, I caused the foregoing document to be served on the counsel listed below via the CM/ECF system:

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3 I certify under penalty of perjury under the laws of the State of Washington that the
4 foregoing is true and correct.

5 DATED this 27th day of July, 2020, at Seattle.

6 /s/Jeni Bonanno

Jeni Bonanno, Legal Assistant